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MEMO ENDORSED

January 29, 2014

By ECF and Hand Delivery

Hon. James C. Francis
United States District Court
Southern District of New York
500 Pearl Street, Room 1960
New York, New York 10007

Re: *Blagman v. Apple Inc. et al.*
12 Civ. 5453 (ALC) (JFC)

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/31/14

Dear Judge Francis:

I represent the Plaintiff and write to request a telephonic conference to address a discovery issue.

At the discovery conference before the Court on November 20, 2013, your honor ruled that “transactions resulting in digital phonorecord delivery to customers of the defendants with a billing address located outside of the United States are beyond the scope of discovery” in this case (Docket No. 76). While Plaintiff intends to amend the complaint to include claims based on unauthorized exports, he intends to complete the scheduled 30b6 depositions of Defendants prior to that amendment. Those depositions will be completed by February 25th, and Plaintiff will amend shortly thereafter.

Plaintiff has subpoenaed Cleopatra, a record label (with numerous imprints) that sells tens of thousands of songs on Defendants retail sites that Plaintiff believes are not licensed. Cleopatra moved to quash the subpoena in the Central District of California but that motion to quash was denied. A copy of the decision is enclosed. The deposition of Cleopatra is now set for February 11th in Los Angeles, and Plaintiff will likely not get another opportunity to question Cleopatra.

Plaintiff seeks leave from the Court to question Cleopatra on a very limited basis regarding the exporting by the Defendants of songs on the Cleopatra imprints for sale on Defendants’ online stores in the United Kingdom. Plaintiff anticipates asking just a handful of questions on that topic. Defendants have indicated they will not consent to the modification of the Court’s order for this limited purpose. 

Plaintiff requests a telephonic conference at the Court’s earliest convenience to address this issue.

Respectfully submitted,

s/ _____

Oren Giskan

cc: All counsel of record (by ECF)

1/31/14

Application denied. There is no basis for deposing a witness on issues that are not relevant to the plaintiffs' current claims, but only to claims that may be asserted in a yet-unfiled amended complaint.

so ORDERED.
James C. Francis IX

USM/T